

BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION

Advisory Opinion

The procurement law prohibits a contractor providing an analysis or recommendation to the County concerning a particular matter from seeking or obtaining a benefit beyond the County's payment to the contractor, without first obtaining the Chief Administrative Officer's (CAO) written consent. The procurement law also prohibits a contractor from using confidential information obtained during the performance of a contract, unless expressly authorized in the contract or by the CAO. A contractor that provided the County with an assessment of the work necessary to effect certain repairs now wishes to respond to the County's subsequent Request For Proposal (RFP) for engineering design services to design the rehabilitation work it recommended. We conclude that the contractor must obtain the CAO's written consent before responding to the RFP.

Facts

The County engaged a contractor to evaluate and recommend the work needed to repair a County structure. The contractor provided a final report with its findings, evaluations and recommendations. The County used the report as the basis for its subsequent RFP for engineering design services to design the rehabilitation work the contractor recommended. The contractor wishes to submit a proposal in response to the RFP.

Applicable Law

Sections 11B-52(b) and (c) of the procurement law state:¹

- (b) A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer:

* * *

- (2) seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County.
- (c) A contractor must not use confidential information obtained in relation to performing a contract except as expressly authorized in the contract or by the Chief Administrative Officer.
- (d) If, the Chief Administrative Officer, after finding that the action would not impair the public interest, consents to any action under subsections (b) or (c), the Chief Administrative Officer must promptly notify the Ethics Commission.

¹ The Ethics Commission may issue advisory opinions interpreting the ethics provisions of the procurement law. § 19A-7(a). Unless otherwise indicated, all references are to the Montgomery County Code (1994), as amended.

Analysis

The contractor must obtain the CAO's written consent before submitting a proposal in response to the County's RFP. Sections 11B-52(b) and (c) of the procurement law serve two broad purposes in this case. First, they assure that the contractor has not gained some unfair advantage over other bidders by virtue of its previous work assessing the needed repairs. Second, they assure that the contractor truthfully assessed the needed repairs and did not prepare its initial report with an eye toward a subsequent proposal.

Conclusion

The contractor must obtain the CAO's written consent before responding to the RFP.

FOR THE COMMISSION:

[signed]

Elizabeth Kellar, Chair